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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,992

10/18/2004

Dante Monteverde

35041-400500

5991

27717 7590 10/14/2009
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EXAMINER

MILLER, ALAN S

ART UNIT

PAPER NUMBER

3624

MAIL DATE

DELIVERY MODE

10/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/711,992	Applicant(s) MONTEVERDE, DANTE	
	Examiner ALAN MILLER	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed 8/5/2009, in regards to the application filed 10/18/2004.

Claims 1-24 are pending and have been examined.

This action is Non-Final.

Response to Amendment

2. Examiner notes Applicant's amendments to claims **1**, and **5 – 14**.

Examiner further notes that the Examiner took Official Notice in the prior Office Action that "it is old and well known to have consumers file complaints against merchants ". The MPEP states "To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why *the noticed fact* is not considered to be common knowledge or well-known in the art" (emphasis added). Therefore the Applicant has failed to adequately traverse the Examiner's use of Official Notice. The MPEP goes on to say "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate." Therefore, Examiner notes that "it is old and well known to have consumers file complaints against merchants" is taken to be admitted prior art. Further, for the benefit of the prosecution of the case, however, the Examiner refers to Sloo (U.S. 5,668,953) to demonstrate it is old and well known to have consumers file complaints against merchants.

Response to Arguments

3. Applicant's arguments with respect to newly amended features in claim 1 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's arguments that Veschi teaches away from the present invention by having qualified parties vote to resolve disputes, and that in contrast, Applicant's claimed invention provides a rating system which is simpler and more efficient than Veschi's voting system and eliminates the need for any qualified parties or "resolvers.", Examiner respectfully disagrees. Applicant claims broadly recite 'receiving from third parties ratings', and therefore reads on Veschi's disclosure. Further, it is noted that the features upon which applicant relies (i.e., invention provides a rating system which is simpler and more efficient than Veschi's voting system and eliminates the need for any qualified parties or "resolvers") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims **1-7, 11 – 16 and 20 – 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Veschi (U.S. 7,251,607) in view of Rebane (U.S. 6,539,392)..

In respect to claim **1**, Veschi discloses:

receiving a complaint from a consumer in an electronic format regarding a merchant (see at least column 6, line 53 – column 7, line 5, which discloses a party to the dispute (i.e. *a consumer*) provides information regarding the dispute, such as by filling in an initial complaint form);

forwarding the complaint to the merchant for a merchant's response (see at least column 6, line 53 – column 7, line 5 which discloses the dispute system determines if the information provided includes information from both or all parties...if the answer is no, then a query is issued to the missing parties (i.e. *the merchant*)... if one party submits, the submitting party may provide identification information of the other party (i.e. *the merchant*), and the query step may comprise an email to the other party (i.e. *the merchant*) informing them of the commenced dispute (i.e. *forwarding the complaint to the merchant for a merchant's response*));

displaying the complaint and a merchant's response on an Internet site (see at least column 11, line 39 – column 13, line 52, and FIG. 8, 860, specifically column 12, lines 50 – 60, which discloses the transcript area displays the interaction between each party (i.e. *displaying the complaint and any merchant's response on an Internet site*); see also column 6, lines 4 – 33, which discloses a dispute system connected to a plurality of Squires and the parties, and also one or more visitors or observers referred to as the “gallery” may also be coupled to the system).

Veschi further discloses receiving from third parties a plurality of votes indicating said third parties' opinions of righteousness of said consumer and/or said merchant from users other than said consumer or said merchant in an electronic format (see at least column 6, lines 4 – 33, which discloses the gallery members may also have the ability to interact...to vote on whom should be the prevailing party, etc (i.e. *receiving from third parties a plurality of votes indicating said third parties' opinions of righteousness of said consumer and/or said merchant from users other than said consumer or said merchant in an electronic format*).

Veschi further discloses displaying the user's opinions and a voting tally (i.e. *displaying ratings*) and further discloses submitting to the gallery questions to receive their opinion (see at least FIG. 8, 875, 880, 895 and 897 and column 13, lines 20 – 35)).

Veschi does not explicitly disclose a consumer and a merchant.

Examiner notes that it is old and well known to have consumers file complaints against merchants (see at least Conclusion, reference 'c' of this action, of Sloo (U.S. 5,668,953).

It would have been obvious to one of ordinary skill in the art to include in the parties of Veschi the old and well known consumers and merchants as parties to complaints since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of using the system to settle disputes between any two parties, including a consumer and a merchant.

Veschi does not explicitly disclose receiving ratings or displaying an averaged numerical representation of the ratings.

Rebane discloses receiving a plurality of users' ratings and displaying the ratings as an averaged numerical representation (see at least FIG. 2a, and column 9, line 66 - column 10, line

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1 and column 10, lines 31 - 39, which discloses merchant questionnaires and ratings on a scale from 1 – 10 and FIG. 5a, which discloses average scores based on a scale of 1 - 10).

Since each individual element and its function are shown in the prior art, albeit shown in separate references, the differences between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself- that is the questionnaire with scaled ratings and displayed average of ratings of Rebane for the Yes and No questions and voting tally as disclosed in Veschi.

Thus, the simple substitution of one known element for another producing predictable result of using a questionnaire to solicit opinions renders the claim obvious.

In respect to claim 2, Veschi discloses determining the identification of each third party that submits an opinion of righteousness (see at least column 13, lines 53 – 64, which discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party or Gallery member; see also FIG. 10).

In respect to claim 3, Veschi discloses determining the identification of the consumer (see at least column 13, lines 53 – 64, which discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party (i.e. *consumer*) or Gallery member; see also FIG. 10, 1015 ‘Status’). Examiner notes that the Plaintiff could be a consumer with a complaint against a merchant.

In respect to claim 4, Veschi discloses determining the identification of the merchant (see at least column 13, lines 53 – 64, which discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party (i.e. *merchant*) or Gallery member; see also FIG. 10, 1015 ‘Status’). Examiner notes that the Defendant could be a merchant with a complaint filed by a consumer.

In respect to claim 5, Veschi discloses comparing the identification of the consumer to the identification of each of said third parties (see at least column 13, lines 53 – 64, which discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party or Gallery member; Examiner notes that since each user has a unique identifier, the identification of the consumer is compared to the identification of each third party that submits an opinion or the identifier would not be unique).

In respect to claim 6, Veschi discloses comparing the identification of the merchant to the identification of each of said third parties (see at least column 13, lines 53 – 64, which discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party or Gallery member; Examiner notes that since each user has a unique identifier, the identification of the consumer is compared to the identification of each user that submits an opinion, or the identifier would not be unique).

In respect to claim 7, Veschi discloses wherein the step of displaying as an averaged numerical representation further comprises excluding ratings received from said consumer and

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said merchant. (see at least column 13, lines 53 – 64, which discloses that the dispute system may track the galleries votes, and prevent a gallery members vote from being counted twice, and further discloses the data record may include a unique identifier identifying the person and stats to indicate whether the person is a Squire, party or Gallery member; Examiner notes that since each user has a unique identifier, the identification of the consumer is compared to the identification of each user that submits an opinion, or the identifier would not be unique, and since only Squires or Gallery members may vote, the representation excludes the ratings from consumer and merchant, since they are not Gallery Members or Squires.)

In respect to claim **11**, Veschi discloses wherein the third party ratings include a rating of the credibility of the merchant and the consumer (see at least column 13, lines 29 – 35, which discloses the gallery voting; and see also FIG. 8, 890, which discloses the galleries' opinions, FIG. 8, 897, which discloses a voting (i.e. *include a rating of the credibility of the merchant and the consumer*)).

In respect to claim **12**, Veschi does not explicitly disclose wherein the third party ratings include a rating of the third party's prior interactions with the merchant.

Rebane discloses wherein the third party ratings include a rating of the third party's prior interactions with the merchant (see at least FIG. 2a, and column 9, line 66 - column 10, line 1, which discloses merchant questionnaires (i.e. an analysis of the user's prior interactions with the merchant)).

It would have been obvious to one of ordinary skill in the art to include in the users opinions of Veschi the merchant questionnaires as taught by Rebane since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of having opinions from the gallery from users that have had some experience with the merchant, or to allow users that have had experience with the merchant become Squires (see at least Veschi, column 6, lines 4 – 11).

In respect to claim **13**, Veschi does not explicitly disclose wherein the step of receiving a plurality of ratings includes receiving a scaled numerical representation from the user.

Rebane discloses wherein the step of receiving a plurality of ratings includes receiving a scaled numerical representation from the user (see at least FIG. 2a, and column 9, line 66 - column 10, line 1 and column 10, lines 31 - 39, which discloses merchant questionnaires and ratings on a scale from 1 - 10).

It would have been obvious to one of ordinary skill in the art to include in the users opinions of Veschi the merchant questionnaires as taught by Rebane since the claimed invention is merely a combination of old elements, and one of ordinary skill in the art would have recognized that it would produce a predictable result of having numerical opinions from the gallery based on a survey in addition to voting or typing free-form opinions.

Claims **14 - 16, and 20 - 24** recite subject matter similar to that already rejected above. Therefore, claims **14 - 16, and 20 - 24** are rejected on the same basis as claims **1 – 7** and **11 – 13**.

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6. Claims **8 - 10 and 17 - 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Veschi in view of Rebane in further view of Tewari et al. (U.S. 7,363,361, hereinafter Tewari).

In respect to claims **8 - 10**, Veschi discloses a unique identifier identifying the person and a status (see at least column 13, lines 53 - 64). Veschi does not explicitly disclose wherein the step of verifying the origination of each of said third parties includes determining the respective third parties Internet Protocol address of a computer used by the third party; comparing the third party's Internet Protocol address to an Internet Protocol address assigned to the Internet merchant when the Internet merchant's response was received; or comparing the third party's Internet Protocol address to an Internet Protocol address assigned to the Internet consumer when the complaint was received.

Tewari et al. discloses using a user's IP address and/or URL to authenticate the user (i.e. *determining the third party's Internet Protocol*) (col. 49, lines 3-17 and 32-33). Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Veschi to use a user's IP address and/or URL to authenticate the user as doing so ensures that the user is who they say they are by identifying the computer they are coming from, thereby enhancing the integrity of the complaint system.

Claims **17 - 19** recite subject matter similar to that already rejected above. Therefore, claims **17 - 19** are rejected on the same basis as claims 8 - 10 above.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - a. Martherus et al. (U.S. 7,194,764) discusses verifying identity of a user by comparing the user's IP address to an IP addresses called for by the authorization rule;
 - b. Walker et al. (U.S. 7,383,200) discusses receiving customer feedback about products/services.
8. Sloo (U.S. 5,668,953) discloses a complaint handling method including storing the compliant and associated response on a publicly accessible computer bulletin board.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to ALAN MILLER whose telephone number is (571)270-5288.

The examiner can normally be reached on Mon - Fri, 10:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BRADLEY BAYAT can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M./

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624